

ANNUAL REPORT

FISCAL YEAR 2009-2010

CAREER SERVICE REVIEW BOARD

STATE OF UTAH



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CAREER SERVICE REVIEW BOARD

STATE OF UTAH

ANNUAL REPORT

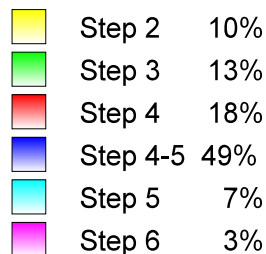
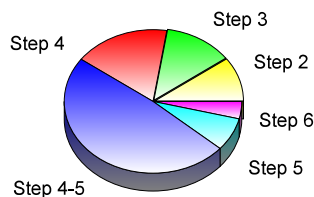
FISCAL YEAR 2009-2010

**LEVELS AT WHICH GRIEVANCE CASES
WERE RESOLVED DURING FISCAL YEAR 2009-2010**

LEVELS OF RESOLUTION	GRIEVANCE CASES	NO. OF EMPLOYEES
Step 2 Immediate Supervisor	8	8
Step 3 Agency/Division Director	10	10
Step 4 Department Head	14	12
Mediation Forum (Between Steps 4 & 5)	39	38
*Step 5 Evidentiary Hearing	6	6
Step 6 Appellate Review by Board	3	2
TOTALS:	80	76

*In addition to the six cases resolved at Step 5 during Fiscal Year 2009-2010, the CSRB held an additional Step 5 hearing that is not reflected in this chart. This additional hearing is not reflected in this chart because the decision was either issued after June 30, 2009, resolved at Step 6 or still on appeal to Step 6. This hearing however, is reflected in the material found at page 12.

LEVELS OF RESOLUTION BY PERCENT



**NUMBER OF APPEALS FROM DISCIPLINARY
PENALTIES AND LEVELS OF RESOLUTION
DURING FISCAL YEAR 2009-2010**

LEVEL	DISCIPLINARY* PENALTIES RESOLVED
Step 2	1
Step 3	6
Step 4	7
Mediation Forum (Between Steps 4 & 5)	27
**Step 5	5
Step 6	3
TOTAL:	49



***Note:** There are only four disciplinary actions designated by statute: written reprimand, suspension, demotion and dismissal (*Utah Code*, Section 67-19a-302(1)). No other issues qualify as disciplinary actions.

****** In addition, to the five disciplinary cases identified here, there was an additional Step 5 evidentiary hearing held during Fiscal Year 2009-2010, that involved disciplinary matters. This matter hearing was in 2009-2010 but the decision was issued after June 30, 2010 and will reflect in next year's annual report.

**RESOLUTION ON APPEALS FROM DISCIPLINARY ACTIONS
DURING FISCAL YEAR 2009-2010**

LEVEL	ACTION	NUMBER	DETERMINATION					
			AFFIRMED	MODIFIED	RESCINDED			
Step 2	Reprimand	0	0	0	0			
	Suspension	1	1	0	0			
	Demotion	0	0	0	0			
	Dismissal	0	0	0	0			
Step 3	Reprimand	3	1	2	0			
	Suspension	3	3	0	0			
	Demotion	0	0	0	0			
	Dismissal	0	0	0	0			
Step 4	Reprimand	2	1	1	0			
	Suspension	4	2	2	0			
	Demotion	1	1	0	0			
	Dismissal	0	0	0	0			
Mediation/Jurisdiction Forum	Reprimand	2	0	1	1			
	Suspension	4	0	3	1			
	Demotion	2	1	1	0			
	Dismissal	19	9	8	2			
Step 5	Reprimand	0	0	0	0			
	Suspension	0	0	0	0			
	Demotion	0	0	0	0			
	Dismissal	5	5	0	0			
Step 6	Reprimand	0	0	0	0			
	Suspension	0	0	0	0			
	Demotion	0	0	0	0			
	Dismissal	2	2	0	0			
TOTAL DISCIPLINARY APPEALS:		48	=	26	+	18	+	4

**FREQUENCY DISTRIBUTION OF GRIEVANCE ISSUES
DURING FISCAL YEAR 2009-2010**

ISSUES	OCCURRENCES
Dismissal.	26
Suspension.	12
Promotion.	1
Salary..	4
ASI (2)	
On Call Pay (1)	
Pay Equity (1)	
Equitable Administration of Benefits.	2
Demotion.	3
Written Reprimand..	7
Administrative Actions.	5
Performance Evaluation.....	2
Transfer.	2

ISSUES	OCCURRENCES
Workplace Harassment.	2
Written Warning.	4
APS Referral.	1
Corrective Action Plan.....	1
Reduction in Force.....	6
Leave.	1
Work Load Distribution.....	1
<u>TOTAL ISSUES GRIEVED:.....</u>	80

Note: There were 80 grievance cases resolved; however, some cases had multiple issues grieved. Thus, the overall number of grievance issues resolved (80) exceeds the total number of employees' cases (76) that were resolved.

**GRIEVANCE CASES IDENTIFIED BY DEPARTMENTS
AND LEVELS OF RESOLUTION
DURING FISCAL YEAR 2009-2010**

**ADMINISTRATIVE
SERVICES**

Step 2 - 0
3 - 0
4 - 0
4-5 - 0
5 - 2
6 - 0

COMMERCE

Step 2 - 0
3 - 0
4 - 0
4-5 - 3
5 - 0
6 - 0

CORRECTIONS

Step 2 - 1
3 - 3
4 - 5
4-5 - 5
5 - 0
6 - 2

COURTS

Step 2 - 0
3 - 0
4 - 0
4-5 - 1
5 - 0
6 - 0

**DRUG ALCOHOL
BEVERAGE CONTROL**

Step 2 - 0
3 - 0
4 - 0
4-5 - 2
5 - 0
6 - 0

EDUCATION

Step 2 - 0
3 - 0
4 - 0
4-5 - 2
5 - 0
6 - 0

**ENVIRONMENTAL
QUALITY**

Step 2 - 0
3 - 0
4 - 4
4-5 - 0
5 - 0
6 - 0

HEALTH

Step 2 - 1
3 - 0
4 - 0
4-5 - 4
5 - 0
6 - 1

INSURANCE

Step 2 - 0
3 - 0
4 - 0
4-5 - 1
5 - 0
6 - 0

HUMAN SERVICES

Step 2 - 3
3 - 6
4 - 2
4-5 - 11
5 - 2
6 - 0

PUBLIC SAFETY

Step 2 - 0
3 - 0
4 - 0
4-5 - 2
5 - 1
6 - 0

NATURAL RESOURCES

Step 2 - 0
3 - 0
4 - 0
4-5 - 1
5 - 0
6 - 0

NON-SATE EMPLOYEE

Step 2 - 0
3 - 0
4 - 0
4-5 - 1
5 - 0
6 - 0

TAX COMMISSION

Step 2 - 1
3 - 0
4 - 1
4-5 - 0
5 - 1
6 - 0

TECHNOLOGY SERVICES

Step 2 - 0
3 - 1
4 - 0
4-5 - 0
5 - 0
6 - 0

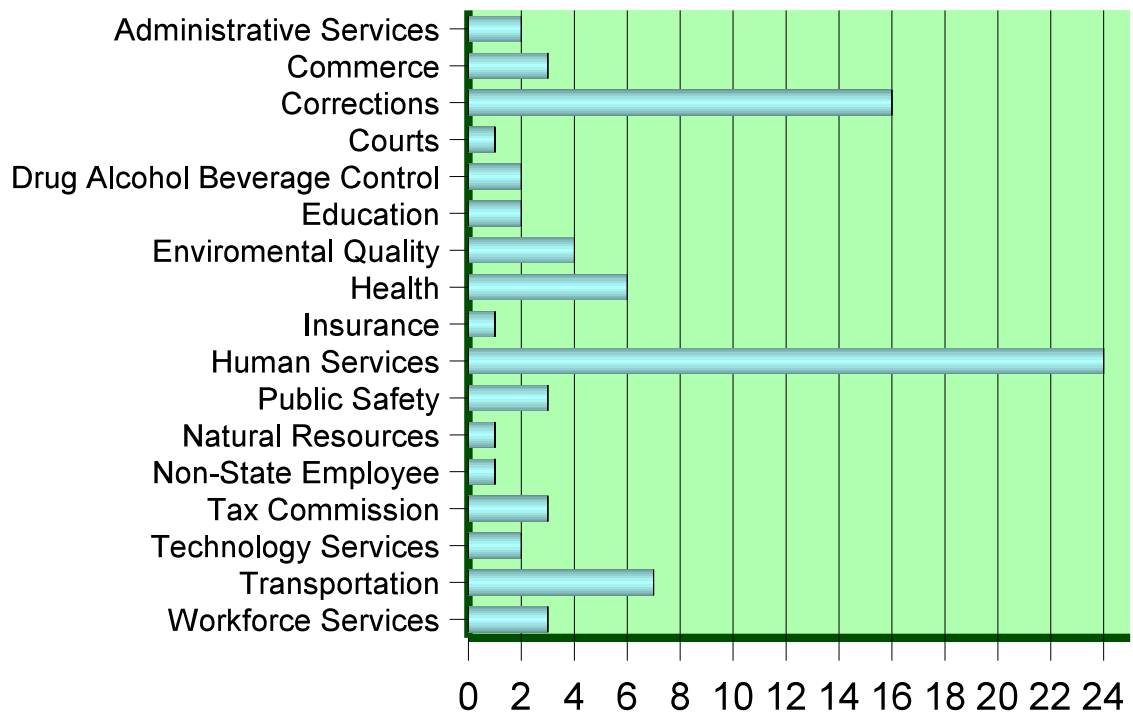
TRANSPORTATION

Step 2 - 0
3 - 0
4 - 0
4-5 - 7
5 - 0
6 - 0

**WORKFORCE
SERVICES**

Step 2 - 2
3 - 0
4 - 1
4-5 - 0
5 - 0
6 - 0

GRIEVANCES BY DEPARTMENT



GRIEVANCE CASES PER LEVEL RESOLVED
DURING FISCAL YEAR 2009-2010

STEP 2		
Immediate Supervisor	Cases: 8	Employees: 8

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
B.C. B	Leave Use	Human Service/USDC
M.C.	Written Warning	Health/Vital Records
J.D.	Administrative Action	Human Service/JJS
T.E..	Corrective Action Plan	Human Service/DCFS
M.E.	Administrative Action	Corrections/CO
I.G.	Hostile Work Enviroment	Tax/Auditing
J.T.R.	Three Day Suspension	Workforce/Employment Counselor
D.R.S.	Transfer/Work Location	Workforce/ESD

STEP 3		
Division/Agency Director	Cases: 10	Employees: 10

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
D.A.	Transfer	Corrections/AP&P
A.F.C.	Ten Hour Suspension	Technology/Finance
A.F.	APS Referral	Human Services/USDC
W.H.	Three Day Suspension	Human Services/JJS
M.P.	Administrative Action	Corrections/DIO
M.P.	Administrative Action	Corrections/AP&P
S.P.	Reprimand	Human Services/USDC
J.R.	Reprimand	Human Services/JJS
G.S.	Reprimand	Human Services/USDC
B.T.	Three Day Suspension	Human Services/JJS

STEP 4		
Department Head	Cases: 14	Employees: 12

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
D.RA.	Reprimand	Public Safety/UHP
C.B.	Pay Adjustment	Corrections/AP&P
L.B.	Suspension	Corrections/DIO
D.E.	Written Warning	Environmental Control/DRC
D.E..	Workload Distribution	Environmental Control/DRC
D.E.	Hostile Work Enviroment	Environmental Control/DRC
C.H.	Thirty-six Hour Suspension	Corrections/DIO
M.H.	One Day Suspension	Human Services/DIO
S.J.O	Performance Evaluation	Environmental Control/DRC
P.P.	Twenty Hour Suspension	Corrections/DIO
M.P.	Written Warning	Human Services/ORS
K.D.P.	Performance Review	Tax/Auditing
D.L.P	Reprimand	Corrections/DIO
B.Y.	Demotion	Workforce Services

MEDIATION/JURISDICTIONAL FORUM		
Between Steps 4 and 5	Cases: 39	Employees: 38

<u>Employees</u>	<u>Issues</u>	<u>Department</u>
T.A.	Dismissal	Transportation/Compliance Specialist
S.B.	Promotion	Natural Resources/Fire Tech III
G.B.	Dismissal	Commerce/Securities Examiner
J.B.	Dismissal	Private Company

M.S.B.	On Call Pay	Corrections/Clinical Service Bureau
L.C.	Equitable Administration of Benefits	Human Services/DCFS
S.C.	Dismissal	Human Services/USDC
E.C.	Dismissal	Alcohol Beverage Control/Asst. Store Manager
B.D.	Dismissal	Transportation/Engineering Tech IV
T.D.	Reprimand	Transportation/Tech II
B.D.	Forty Hour Suspension	Transportation/Engineering Tech IV
M.B.D.	Dismissal	Human Services/Psychiatric Developmental Tech
T.D.E.	Dismissal/Forced Resignation	Education/Specialist
V.E.	Forty Hour Suspension	Health/Program Manager
A.D.G.	Written Warning	Transportation/Motor Carrier Specialist
S.H.	Equitable Administration of Benefits	Insurance/Market Conduct Examiner I
P.W.H.	Demotion	Transportation/Financial Analyst III
P.H.	Dismissal	Human Services/Lead Developmentalist
B.H.	Administrative Action	Human Services/Compliance Manager
V.I.	Dismissal	Education/Educational Specialist
J.J.	Salary Equity	Correction/AP&P
D.B.J.	Dismissal	Human Services/USDC
S.K.	Dismissal	Courts/Judicial Asst.
J.L.	Dismissal	Human Services/USDC
B.M.	Reduction In Force	Human Services/Grant Analyst

P.M.	Dismissal	Alcoholic Beverage Control/Sales
M.J.M	Demotion	Public Safety/UHP
M.N.	Reduction In Force	Health/Program Specialist
D.N.	Reduction In Force	Human Services/Auditor
T.L.P.	Dismissal	Health/Office Specialist
L.P.	Three Day Suspension	Human Services/JJS
J.M.P.	Reduction In Force	Health/Disease Control
S.D.R.	Dismissal	Commerce/DCCC
G.R.	Three Day Suspension	Commerce/Securities
J.T.	Dismissal	Human Services/JJS
T.E.W.	Dismissal	Transportation/Region 2
J.L.W.	Reprimand	Correction/AP&P
W.B.W.	Salary	Correction/DIO
R.Z.	Dismissal	Correction/DIO

STEP 5

Evidentiary Hearing Cases: 6

Employees: 6

<u>Issue</u>	<u>Issues</u>	<u>Department</u>
Chris Hight	Dismissal	Administrative Services/Purchasing and General Services
Konrad Hosteen	Dismissal	Human Services/USDC
Gloria Jenson-Sutton	Reduction In Force	Human Services/DAAS
David Johnson	Dismissal	Public Safety/UHP

Megan Lecheminant	Dismissal	Tax Commission/Processing
Brandon Miller	Dismissal	Administrative Services/DFCM

Note: In addition to these six cases resolved at Step 5 during Fiscal Year 2009-2010, the CSRB held an additional Step 5 hearing in the following case. This case was heard at Step 5, but not resolved during Fiscal Year 2008-2009, because the final decision was issued after June 30, 2010, resolved at Step 5 Decision upheld.

<u>Employee</u>	<u>Issue</u>	<u>Department</u>	<u>Decision Issued</u>	<u>Status</u>
Rick Thomas	Dismissal	Workforce Services	July 6, 2010	Closed

STEP 6
Appellate Review/Board Cases: 3 Employees: 2

<u>Employee</u>	<u>Issue</u>	<u>Department/Division</u>
Delphi Alvarado	Dismissal	Correction/AP&P
Melanie Ford	Reduction In Force	Health/Office Specialist
Brendon Grames	Dismissal	Corrections/DIO

**JURISDICTIONAL HEARINGS AND
ADMINISTRATIVE REVIEWS OF THE FILE
CONDUCTED DURING FISCAL YEAR 2009-2010**

JURISDICTIONAL HEARINGS:

A jurisdictional hearing is a formal adjudication conducted according to the Utah Administrative Procedures Act. These hearings are held at the request of employees, agency management, or at the initiative of the CSRB administrator. Jurisdictional hearings address the four issues of: timeliness, direct harm, standing and eligibility to advance issues and remedies to the evidentiary/step 5 level, according to *Utah Code*, §67-19a-403(2)(b)(I).

EMPLOYEE/CASE NO.	ISSUE	DEPARTMENT
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None Held

ADMINISTRATIVE REVIEWS OF THE FILE:

An administrative review of the file is an informal adjudication under the Utah Administrative Procedures Act. The contents of the CSRB's case files are reviewed and a written legal decision is issued. The decision is based upon a consideration of all documents contained in the CSRB's file. These reviews are conducted according to *Utah Code*, §67-19a-403(2)(b)(ii).

EMPLOYEE/DATE ISSUED	ISSUE	DEPARTMENT/CASE NUMBER
Sam Biers May 2009	Promotion	Natural Resources J.H. 186
Laura Clark June 2009	Equitable Administration of Benefits	Human Services JH 183
Tim Eccleston November 2009	Forced Resignation/ Dismissal	Education JH189
Andrea Gonzales September 2009	Written Warning	Transportation JH 188
Patrick Wray Hayes July 2009	Demotion	Transportation JH 187
Beverly Macfarlane August 2009	Reduction In Force	Human Services JH 184
Devon Nish August 2009	Reduction In Force	Human Services JH 185
Robert Zisumbo	Dismissal	Corrections JH 190

**JUDICIAL REVIEW BY THE COURTS
CASES DECIDED DURING FISCAL YEAR 2009-2010**

DESIGNATION IN THE COURT OF APPEALS:

1. *John M Duran v. Utah Department of Technology Services*

Step 5 Ruling: Grievant's dismissal was upheld.

Step 6 Ruling: The Board found the Department's decision to terminate Appellant's employment to be based upon just cause and to advance the good of the public service and upheld the Hearing Officer's decision sustaining Mr. Duran's termination of employment.

Court of Appeals: Decision upheld the Board's decision. The Court of Appeals seen nothing arbitrary or capricious with regard to the Board's determination.

2. *Julie Ann Olson, Grievant v. Utah Department of Health, Agency*

Synopsis: Grievant originally appealed to the CSRB a Department of Health imposed demotion that resulted in a reduction in Grievant's actual wage and a reassignment to a position having a lower maximum salary range. After a prehearing conference was held in this matter, but before an evidentiary hearing had occurred, the Department retroactively restored Grievant's prior salary, but kept her position reassignment in place. After retroactively restoring Grievant's wage and salary, the Department moved to dismiss Grievant's grievance before the CSRB, arguing that absent an actual reduction in wage or salary, Grievant had not been demoted as defined by statute, thus stripping the CSRB of jurisdiction to review or adjudicate her claims. In a jurisdictional decision dated June 7, 2007, the CSRB Administrator dismissed Grievant's appeal to the CSRB concluding that Grievant had not been demoted as that term is defined by State law. Grievant then appealed this decision to the Utah State District Court.

Decision: On October 21, 2008, the District Court entered a decision overturning the CSRB's jurisdictional decision. In reaching this decision, the District Court concluded: "In the instant case, it is undisputed Ms. Olson was transferred as part of the 'disciplinary action of demotion.'" This case went on appeal to the Utah Court of Appeals. On October 22, 2009 the Court of Appeals decision remanded the case back to Judge Fratto. On March 25, 2010 Judge Fratto signed an Order Dismissing Case with Prejudice and it was entered on March 26, 2010.

DESIGNATION IN THE THIRD DISTRICT COURT:

1. *Brenda Bryant, Grievant, v. Utah Department of Health, Agency*

Synopsis:

Jurisdiction denied. Department's action constituted a reassignment not a demotion. There was no loss of "current actual wage." This decision was appealed to the District Court and assigned to Judge Medley. In March 2010, Judge Medley issued an *Order For Dismissal With Prejudice*.

2. *Blitch Shumway, Grievant and Respondent, v. Utah Department of Corrections, Agency and Appellant*

Jurisdiction denied. Department's action constituted a reassignment not a demotion. There was no loss of "current actual wage." Appealed to Third Judicial District Court.

Synopsis:

On July 10, 2007, the Career Service Review Board issued an administration decision in the case of Blitch Shuman v. Utah Department of Corrections, Case No. J.H. 164. This decision was appealed to the District Court and assigned to Judge Kennedy, as *Hanford "Blitch" Shuman, III, v. The Statue of Utah Department of Corrections, the Career Service Review Board and the Department of Human Resource Management*, Civil No. 070911287. On March 4, 2010 Judge John Paul Kennedy issued an Order for Dismissal with Prejudice in this matter and it was closed out.

3. *Nancy Valdez and Carrie Worthen v. Utah Department of Human Services*

Jurisdiction denied. Grievant's separately advanced their wage or salary grievances to the CSRB. The Administrator dismissed both grievances finding that the Board lacked jurisdiction to review or adjudicate grievant's wage or salary claims. Grievant's appealed to the Third District Court.

Synopsis:

These cases were joined and assigned to Judge Toomey as *Worthen et. al. V. Department of Human Services*, Case No. 080901915. On July 4, 2009 Toomey issued an order remanding this case to the CSRB.

JUDICIAL REVIEW BY THE COURTS
CASES PENDING DURING FISCAL YEAR 2009-2010

1. *Delphi Alvarado v. Utah Department of Corrections*

Step 5 Ruling: Grievant's dismissal was upheld.

Step 6 Ruling: Grievant failed to make arrangements with the court reporting firm sufficient that transcription of her record began within the time limits required in the numerous prior orders. *Utah Admin. Code* R137-1-13 directs that an employee who fails or neglects to process their grievance within established time limits forfeits their rights granted under the State's Grievance and Appeals Procedures. Based upon these facts, Grievant's appeal was dismissed with prejudice. This dismissal was made pursuant to Utah Code Ann. 67-19a-401 and CSRB rules R137-1-13(4) – (5) and R137-1-22. Grievant appealed to Court of Appeals.

Court of Appeals: On May 6, 2010, the Utah Court of Appeals issued a Memorandum Decision granting the Department of Corrections' motion for summary disposition stating: "We conclude that we lack jurisdiction to review the step 5 decision because it was not the final agency action, and we affirm the dismissal of the step 6 appeal for failure to prosecute, which resulted in a waiver of the right to obtain judicial review of Alvarado's dismissal."

Supreme Court: On July 6, 2010 Grievant filed a petition for Writ of Certiorari with the Utah Supreme Court. At the end of FY 2009-2010 this matter was still before the Utah Supreme Court for decision.

**STATISTICAL SUMMARY OF ACTIVITIES
FOR FISCAL YEAR 2009-2010**

GENERAL:

Grievance cases resolved in the CSRB forum:	80
Career service employees participating in the grievance process:	76
Evidentiary/step 5 hearings conducted:	7
Evidentiary/step 5 hearings decisions issued:	6
Appellate/step 6 hearings conducted:	3
Appellate/step 6 decisions issued:	3
Jurisdictional hearings conducted/decisions issued:	0
Administrative reviews of the file conducted/issued:	8
Cases resolved, mediated or otherwise settled following an appeal to Step 5:	31

CSRB BOARD CHAIRPERSON AND BOARD MEMBERS:

Step 6 decisions issued:	3
Orders/Rulings issued:	3

CSRB ADMINISTRATOR:

Prehearing status conference summaries/orders issued:	60
Other orders issued:	40
Conciliation conferences held:	3
Jurisdictional decisions issued:	8

THE COURTS:

CSRB decisions issued by the Utah Court of Appeals:	2
CSRB cases currently pending before the Utah Court of Appeals:	1
CSRB decisions issued by Utah District Courts.	3
CSRB cases currently pending before the Utah District Courts.	0

**ANNUAL GRIEVANCE CASES COMPARED
FOR TEN YEAR PERIOD
FISCAL YEARS 1999-2000 THROUGH 2009-2010**

FISCAL YEAR	TOTAL GRIEVANCES	JURISDICTIONAL DECISIONS	STEP 5 HEARINGS	STEP 6 HEARINGS
00-01	116	6	10	1
01-02	78	5	2	1
02-03	91	9	15	6
03-04	129	12	9	7
04-05	122	15	7	7
05-06	83	6	10	2
06-07	70	9	5	6
07-08	66	14	11	3
08-09	57	6	4	4
09-10	80	8	6	3

